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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT ANCHORAGE

ALASKA RENT A CAR, INC.,)	
an Alaska Corporation,)	
)	
Plaintiff,)	
)	
v.)	
)	
CENDANT CORPORATION, et al.,)	
)	
Defendants.)	Case No. 3:03-cv-29 [TMB]

**MOTION FOR DECLARATORY AND INJUNCTIVE RELIEF
RELATING TO THE BREAKUP OF CENDANT CORPORATION**

**I. DECLARATORY AND INJUNCTIVE RELIEF IS APPROPRIATE TO
ENSURE THE CAR RENTAL BUSINESS RETAINS ITS \$802,000,000.**

Cendant Corporation is in the process of splitting itself into four separate corporations.¹ In the summer of 2006, Cendant will convert from being a single publicly traded corporation to being four separate publicly traded corporations focusing on separate

¹ See **Exhibit 1**, Cendant Corporation's SEC Form 10-Q filing for the quarterly period ended March 31, 2006 at p. 2.

products or services: (1) a hotel franchising business, (2) travel distribution services business, (3) real estate agency franchising, and (4) car rental franchising and operation.² Ron Nelson, president and CFO of Cendant Corporation at the March 2006 Investor Day Presentation, indicated the Avis Budget Corporation would have no debt at the time of separation.³ However, at the time of separation, the car rental business should have over \$802,000,000 of cash on hand.⁴ Mattesich was the 30(b) witness on CCRG's audited Financial Statement for 2005 and finances.⁵ The audited Financial Statement for CCRG for 2005 indicates that Cendant and its affiliates owe CCRG, *i.e.*, Avis' alter ego, \$802,000,000.⁶ The cash that Cendant sweeps from Avis bank accounts on a daily basis is allegedly owed to Avis and is tracked as a part of the \$802,000,000.⁷

Mattesich, the Defendants' 30(b) witness on financial accounting, testified that after the spin-off of the Cendant entities, it would not make sense for Avis to receive money which Avis was allegedly owed by the other Cendant entities.⁸

Since Cendant and its affiliates are holding hundreds of millions of dollars of Avis cash, in the breakup of Cendant it is vital that such a substantial asset not be hidden or "swept under the rug." With the Avis franchisor having hundreds of millions of dollars of cash on hand, it will be in a better position to market and promote Avis from a position of financial strength. Additionally, it will have a more viable means of addressing the nationwide anti-trust law violations whereby both Avis and Budget licensees across the country are being segmented out of markets, price fixed, and harmed.

² *Id.*

³ See **Exhibit 2**, Cendant Investor Day 2006 Presentation at 36; *see also* **Exhibit 3** Deposition of Gerald Mattesich at pp. 96-98.

⁴ See *generally*, **Exhibit 3**, Deposition of Gerald Mattesich at pp. 136-145.

⁵ See **Exhibit 4**, Gerald Mattesich Deposition Notice.

⁶ See Exhibit 3, Deposition of Gerald Mattesich at pp. 142-143; *see* **Exhibit 13** CCRG 2005 audited financial statement at 30. [AVIS 86683-86715].

⁷ See Exhibit 3, Deposition of Gerald Mattesich at pp. 25-28 and 142-143.

⁸ See Exhibit 3, Deposition of Gerald Mattesich at pp. 98 and 103-105.

Further, in response to the piercing the corporate veil motion, the Defendants will no doubt note that the hundreds of millions of dollars Cendant sweeps from Avis' bank accounts are tracked as a ledger entry which Cendant owes to Avis. Either this is a sham justifying piercing the corporate veil or alternatively, the debt is real and Cendant actually owes hundreds of millions of dollars to Avis. If it is a sham in audited financial statements of a publicly traded company, then it is in the public interest to get to the bottom of such matters, and for the Court to have full access to the truth to consider this in considering the motion on piercing the corporate veils. In the alternative, if it is a real debt actually owed, then there is no harm in obtaining judicial recognition of the debt and ensuring Avis receives its funds before various assets are spun out of Cendant.

Cendant Corporation will be the residual corporation left with the car rental business after the other three corporations are spun-out of Cendant (which will be renamed Avis Budget Group, Inc.)⁹ Thus, just as dispositive motion practice is occurring in this case, the Defendants are transferring three-quarters of their assets (three spinouts). Therefore, the Court should issue declaratory judgment that the \$802,000,000 owed to CCRG (Avis) is a legitimate debt and must be satisfied before any of the various corporate spinouts into publicly traded separate companies can occur. If Avis will not be paid the hundreds of millions of dollars it is owed as part of the spinout of the various public corporations from Cendant Corporation, then the Court should issue a permanent injunction enjoining the spinout of the various companies until such time as the payment is made.

⁹ See Exhibit 3, Deposition of Gerald Mattesich at pp. 96-98.

II. PERMANENT INJUNCTIVE RELIEF SHOULD BE GRANTED ENJOINING DEFENDANTS FROM ASSOCIATING AVIS AND BUDGET IN THEIR CORPORATE NAMES AND OTHERWISE.

Cendant Car Rental Group, Inc. had its name changed to Cendant Car Rental Group, LLC and is now called Avis Budget Car Rental LLC.¹⁰ Cendant Corporation is apparently going to change its name to Avis Budget Group, Inc.¹¹ Alaska Rent A Car's exclusive license agreement proscribes Alaska Rent A Car from being associated with any other system or any other national or regional vehicle rental system.¹² By affiliating Avis and Budget's names directly in the corporate names of both the franchisor Avis Budget Car Rental LLC and with respect to other corporate entities (Avis Budget Group, Inc.), Avis is being associated with Budget in violation of ELA § 3.12.

Agency Settlement Agreement ("ASA") ¶ IV.C. mandates the separateness and independence of Avis and Budget.¹³ The names "Avis Budget Car Rental LLC" and "Avis Budget Group, Inc." is not keeping Avis and Budget separate but is joining them into a publicly displayed name. Further, ASA § I.B. prohibits the Avis Parties from acquiring an additional company. Acquire is defined to include "to own, manage, establish, operate, act in concert or participation with, franchisor or license."¹⁴ By associating the names Avis and Budget, Avis is acting in concert with and participating with Budget in violation of the ASA. Having a public name associating Avis and Budget violates the ASA prohibition on joint marketing and maintaining separateness of Avis and Budget.

Associating the Avis and Budget names together, violates both contracts and the Unfair Trade Practices Act, A.S. 45.50.471, by suggesting that Budget and Avis have

¹⁰ See **Exhibit 5**, Defendants' Amended Statement of Corporate Ownership Pursuant to Rule 7.1 dated April 11, 2006 at p. 2.

¹¹ See Exhibit 1 Cendant Corporation's SEC Form 10-Q filing for the quarterly period ended March 31, 2006 at p. 2.

¹² See **Exhibit 6**, Exclusive License Agreement at p. 4 ¶ 3.12.

¹³ See **Exhibit 7**, ASA at 5 ¶ IV.B. and C2.

¹⁴ See Exhibit 7, ASA at 1 Definition 1.

affiliations with each other. Consumers may believe that Avis and Budget each have characteristics of the other brand which is misleading and deceptive.¹⁵ Associating Avis and Budget is false advertising in violation of 15 U.S.C. § 1125(a).¹⁶ By jointly marketing Avis and Budget to corporate customers, associations, and insurance replacement customers, Defendants are associating and affiliating Avis and Budget. Describing Avis and Budget as “one network” of locations also falsely designates and associates Avis and Budget.¹⁷ Alaska Rent A Car did not sign onto a 50 year business relationship to be doing business with Budget or to have Avis associated with Budget. Therefore, the Court should grant permanent injunctive relief ordering the Defendants not to use corporate names which suggest Avis and Budget are affiliated with one another.

Further, for the foregoing reasons, the Court should also enter permanent injunctive relief proscribing any marketing literature from indicating an affiliation between Avis and Budget. Business cards of sales people have both the names of Avis and Budget.¹⁸ Employees who have called on Alaska Rent A Car in Alaska for CCRG have had business cards with both Avis and Budget logos displayed on them.¹⁹ Additionally, in marketing literature to insurance companies soliciting their business, the Defendants have touted Avis and Budget as being affiliated with each other and being one network of locations.²⁰

¹⁵ See Motion for Partial Summary Judgment on Count VI on the First Amended Complaint Violation of Alaska Unfair Trade Practices and Consumer Protection Act (AS 45.50.471).

¹⁶ *Twentieth Century Fox Film Corp. v. Marvel Enterprises, Inc.*, 277 F.3d 253, 259 (2nd Cir. 2002); *Waits v. Frito-Lay, Inc.*, 978 F.2d 1093, 1108 (9th Cir. 1992).

¹⁷ See **Exhibit 8** “its one network” at 1, 2.

¹⁸ See **Exhibit 9**, Deposition of Wayne Olin at pp. 166-167.

¹⁹ See **Exhibit 10**, Deposition of Robert Klyce at pp. 24-25 (Robert Muhs business card displays an Avis and Budget logo) *see also* **Exhibit 11** Business card of Karen Atkins at p. 1; Email with business card of Greg Thibault at p. 2 and fax cover sheet from Mike Srnc to Gary Zimmerman at p. 3.

²⁰ See **Exhibit 12**, Budget Insurance Replacement Program dated March 30, 2004, at 4; Exhibit 8 at 1, 2.

The Court should enter permanent injunctive relief prohibiting the Defendants: (1) from marketing Avis and Budget as being associated with one another, (2) from providing business cards bearing both the Avis and Budget logos, (3) from providing marketing literature possessing both Avis and Budget logos, and (4) from in anyway communicating that Avis and Budget are affiliated or associated with one another.

DATED this 20th day of June, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2006 a copy of foregoing Motion for Declaratory and Injunctive Relief Relating to the Breakup of Cendant Corporation was served electronically on Diane F. Vallentine and on

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